IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.257 OF 2005

Mahadeo Kisan Gund .. ..Appellant

Versus

Ramchandra Sidram Kurane ..Respondent

Mr.G.S.Godbole for appellant

Mr.N.J.Patil for respondent

CORAM : P.V.KAKADE, J.

DATE : 20TH JUNE, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by District Judge, Solapur dated 29th July, 2004 dismissing the appeal and confirming the order passed by Civil Judge, Junior Division, Solapur decreeing the suit.

2. I have heard both the sides. Perused the record.

3. The dispute between the parties pertaining to the property located at Solapur. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved his ownership to the property and it was also held to be proved that the plaintiff was put in possession over the entire suit property. It was further held that the defendant encroached upon the property of the plaintiff. The defendant was held to have not proved that he was inducted as a monthly tenant on the property admeausirng 38’ x 20’ forming part and parcel of final plot No.87-B/55 by predecessor in title of the plaintiff. On such and other grounds the suit came to be decreed. The appeal was carried to the District Judge, which after hearing both the parties came to be dismissed. Hence the present appeal.

4. In the course of the arguments advanced on behalf of both sides, it is apparent from the record that at the stage when the appeal in the lower appellate court was pending two applications were preferred by the parties to bring on record additional evidence. The application at Exh.19 was filed by the present appellant

to bring on record the rent receipts. Those rent receipts were allowed to be produced as additional evidence by consent of the other side. Simultaneously the application at Exh.32 was also filed to bring on record the certified copy of Deed of Adoption regarding which the issue was in dispute. However, the learned District Judge instead of adjudicating the application on merits pending the appeal, kept it away apparently to determine it on merits at the time of disposing of the appeal itself, thereby not giving the opportunity to the concerned parties to lead evidence or make submission in that regard. In the course of judgment vide para 9 the learned District Judge appears to have decided the application Exh.32 with observations that the deed of adoption was essential to decide certain points in the present case and to falsify the claim of defendant relating to passing the rent receipts by previous owner of the suit and therefore, considering these reasons stated in the application which supported by the affidavit, the production of certified copy of the deed of adoption was allowed.

5. The learned counsel for the appellant took strong objection to this procedure adopted by the

learned District Judge, apparently due to reason there was no opportunity to rebut the evidence brought on record, especially when the learned District Judge observed that the rent receipts were fabricated documents.

6. In my considered view, on perusing the judgment of the lower appellate court, particularly paras 9 and 10 thereof, I am satisfied that the procedure adopted by the learned District Judge is totally objectionable, when it is clear from the record that finding of fabrication of rent receipts was obviously recorded on the basis of deed of adoption regarding which no submissions were allowed nor opportunity was given to other side to make its submission or challenge the document in question. This aspect constrains me to invoke the provision to remand the appeal as it has caused gross prejudice to the appellant who was deprived of his opportunity to lead evidence or to make submissions to oppose the document in question.

7. It is also apparent that the learned District Judge has passed the order regarding inquiry into mesne profits as contemplated under Order 41 Rule 33 of C.P.C.

in respect of the disputed property. This relief, it is argued, was not called for because there was no specific prayer to that effect.

8. In view of these facts and circumstances, I am inclined to remand the matter for hearing afresh according to law.

. Hence it is directed that the judgment and order passed by District Court, Solapur dated 29.7.2004 is hereby set aside. The appeal is remanded to the District Court, Solapur for hearing afresh and all issues involved including admissibility of the document, which was sought to be produced at Exh.32 i.e. copy of deed of adoption. It is further clarified that since the rent receipts which were produced with Application Exh.19 supported by Exh.20 were permitted to be produced as additional evidence on record by consent, those will remain on record as the documents pertaining to the dispute subject to its evidential value on merits. The appeal to be heard as expeditiously as possible and in any case within four months from the date of receipt of Writ of this Court.

9. It is clarified that pending hearing of the appeal in the District Court, Solapur both the parties shall maintain status-quo with regard to the suit property.

. Certified copy expedited.